

confirmed. I wish to know how she would weigh this issue.

Americans taken hostage by Saddam Hussein, and the verdict of \$10 million—why not have a judicial determination in a matter of this sort? How much do we defer to foreign governments who have murdered and abused and kidnapped American citizens? I think those are fair questions.

I will discuss one more question because I see my colleague Senator SESSIONS is on the floor.

That is the *Kelo* case, *Kelo v. London*, a very famous, widely publicized case on eminent domain. Well, does Dean Kagan have the record in the case? Has she gone through it line by line? No, that has not happened. But the case is pretty well known. It is pretty hard to say you do not know much about that. This is what she said in response to my question regarding the case:

I have never written about the Takings Clause; nor have I taught the subject. . . .

Well, if that is relevant—I do not know if we would confirm very many people to the Department of Justice Attorney General position or Solicitor General position or to other positions if you had to have written about it or if you had to have taught a class on the subject. Here again, we know very little as to what she thinks about an issue.

In essence, it is difficult to cast a negative vote on someone with the qualifications and background of Dean Kagan, but we have a major problem of institutional standing to find out from a nominee what the nominee thinks on important questions.

The nominee disagrees with what I have said. I have talked to her about it. She thinks she can be an advocate for issues even though she feels very strongly the other way. She feels she does not have to answer questions because it would be inappropriate because the case is pending and the Solicitor General has rendered an opinion. Well, I disagree with that. I have no illusion the issues I have raised will prevail. I think it is pretty plain that Dean Kagan will be confirmed. But I do not articulate this as a protest vote or as a protest position, but one of institutional prerogatives. We ought to know more about these nominees. We ought to take the confirmation process very seriously. I believe the scarcity and paucity of Senators who have come to the floor to debate this nomination does not, candidly, speak too well for this institution. We are all waiting to vote to go home. But this is an important position. For a Supreme Court Justice nominee, television cameras would be present during the hearings, and everybody would be there, and everybody would be on camera.

Well, I think we have to pay a little more attention, and I have gone to some length to try to find out more about Dean Kagan. In the absence of being able to do so and to have a judgment on her qualifications, I am constrained to vote no.

Before I yield the floor, Mr. President, again, I ask my colleagues to come to the floor if they are going to have something to say. I would hope we could wind up our activities. We could go until 8 o'clock. I do not think we ought to do that. My view is, we ought to vote no later than 5. But I am not the leader. That is just my view. But I do think people ought to come if they want to speak. Or maybe we will vote at 5 o'clock, and people can speak afterwards. I do not know how it will work out. But I think it would be very healthy if people spoke before the vote on the assumption that we have debate to try to influence other Senators because we are the world's greatest deliberative body, so it says in all the texts. I yield the floor.

EXHIBIT 1

ELENA KAGAN

SOLICITOR GENERAL OF THE UNITED STATES

Birth: 1960; New York, New York.

Legal Residence: Cambridge, Massachusetts.

Education: B.A., *summa cum laude*, Princeton University, 1981; Daniel M. Sachs Graduating Fellow, Princeton University; M.Phil., Worcester College, Oxford, 1983; J.D., *magna cum laude*, Harvard Law School, 1986; Supervising Editor, Harvard Law Review.

Employment: Judicial Clerk, Judge Abner Mikva, U.S. Court of Appeals for the D.C. Circuit, 1986–1987; Judicial Clerk, Justice Thurgood Marshall, U.S. Supreme Court, 1987–1988; Staff Member, Dukakis for President Campaign, 1988; Associate, Williams & Connolly LLP, 1989–1991; Assistant Professor, University of Chicago Law School, 1991–1994; Tenured Professor, 1995–1997; Special Counsel, Senate Judiciary Committee, 1993 (summer); Associate Counsel to the President, Executive Office of the President, 1995–1996; Deputy Assistant to the President for Domestic Policy, 1997–1999; Visiting Professor, Harvard Law School, 1999–2001; Professor of Law, 2001–Present; Dean, 2003–Present.

Selected Activities and Honors: Public Member, Administrative Conference of the United States, 1994–1995; Litigation Committee Member, American Association of University Professors, 2002–2003; Recipient, 2003 Annual Scholarship Award of the American Bar Association's Section of Administrative Law and Regulatory Practice, 2003; Board of Trustees, Skadden Fellowship Foundation, 2003–Present; Board of Directors, American Law Deans Association, 2004–Present; Research Advisory Council, Goldman Sachs Global Markets Institute, 2005–2008; Honorary Fellow, Worcester College, Oxford University, 2005–Present; Board of Advisors, National Constitution Center's Peter Jennings Project for Journalists and the Constitution, 2006–Present; Member, New York State Commission on Higher Education, 2007–2008; John R. Kramer Outstanding Law School Dean Award, Equal Justice Works, 2008; Recipient, Arabella Babb Mansfield Award, National Association of Women Lawyers, 2008; Board of Directors, Equal Justice Works, 2008–Present.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. KAUFMAN. Mr. President, I begin by thanking the Senator from Alabama for his courtesy. I appreciate him allowing me to go before him to speak.

I rise today in support of the nomination of Elena Kagan to be Solicitor

General of the United States. As we saw from her confirmation hearing in the Judiciary Committee more than a month ago, Elena Kagan has the piercing intellect, superb judgment, and wealth of experience necessary to be an outstanding Solicitor General.

Dean Kagan's academic credentials could not be any more impressive. After graduating *summa cum laude* and Phi Beta Kappa from Princeton University, she attended the Harvard Law School, served as supervising editor of the Harvard Law Review, and graduated *magna cum laude*. After law school, she clerked first for Abner Mikva of the District of Columbia Circuit, and then Thurgood Marshall on the U.S. Supreme Court.

That auspicious start to Dean Kagan's legal career was followed by private practice at one of America's leading law firms, and then service in the Office of the Counsel to the President. She has also been a policy adviser to the President, and a legal scholar of the first rank at both the University of Chicago and Harvard.

As others have pointed out, her research and writing in the areas of administrative and constitutional law make her a leading expert on many of the most important issues that come before the Supreme Court.

If that level of experience were not enough, she has spent the last 5 years as the extraordinarily successful dean of the Harvard Law School, which by all accounts is not an easy place to govern.

I note that several of that school's most conservative scholars have voiced their support for this nomination. They praise her vision and judgment, her incredible work habits, and her extraordinary management skills. Just as important, they point to her ability to bridge disagreement, by listening to all sides of an argument, engaging honestly with everyone concerned, and making decisions openly and with good reasons.

No one disputes that Dean Kagan has served Harvard incredibly well. She will do the same for the Office of Solicitor General. Her accomplishments as a scholar and teacher are unmatched. Her skill as a leader and manager are beyond dispute.

In fact, she has the support of every single Solicitor General who has served since 1985, including all three who worked in the previous administration. As they wrote to the Judiciary Committee:

We are confident that Dean Kagan will bring distinction to the office, continue its highest traditions and be a forceful advocate for the United States before the Supreme Court.

On a personal note, I want to add that earlier in her career, Dean Kagan spent some time working as an adviser to then-Senator BIDEN. I had the good fortune to get to know her in that context. Based on that experience, and everything I have seen since, I am absolutely convinced not only that she possesses enormous intellect and consummate skill, but also that she is a person